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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,801	12/13/2003	Stephen C. Gordy	15436.204.2.1	3854
22913	7590	10/18/2007		
WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER FRINK, JOHN MOORE	
			ART UNIT	PAPER NUMBER
			2142	
			MAIL DATE	DELIVERY MODE
			10/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/735,801	GORDY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John M. Frink	2142	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/19/2004</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### *Double Patenting*

1. Claim

- a. 1 of this application conflicts with claims 1 and 27
- b. 2 of this application conflicts with claim 27
- c. 3 of this application conflicts with claim 1
- d. 4 of this application conflicts with claim 1
- e. 5 of this application conflicts with claim 1
- f. 6 of this application conflicts with claim 27
- g. 7 of this application conflicts with claim 32
- h. 8 of this application conflicts with claim 1
- i. 9 of this application conflicts with claim 27
- j. 10 of this application conflict with claim 11
- k. 11 of this application conflict with claim 10
- l. 12 of this application conflict with claim 1
- m. 13 of this application conflict with claim 13
- n. 14 of this application conflict with claim 14

of Application No. 10,735,417. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 6 and 8 - 11 are rejected under 35 U.S.C. 103(a) as being anticipated by Worrall et al. (US 2006/0153177 A1), hereafter Worrall, in view of in view of Sørhaug et al. (US 6,424,627 B1), hereafter Sorhaug, further in view of NetOptics (4x1 GigaBit Tap).

2. Regarding claim 1, Worrall shows a network tap that permits one or more attached devices to communicate with a node of a network, the node of the network communicating with a network cable transmitting network data thereon, the network cable having a first segment and a second segment, the network tap comprising:

a first set of tap ports configured to receive a copy of network data obtained from the network cable, wherein a first attached device can be selectively connected to the first set of tap ports; a second set of tap ports configured to receive a copy of network data obtained from the network cable, wherein a second attached device can be selectively connected to the second set of tap ports (Abstract, Figs. 1A-1C, Figs 4 and 5, [0023-0029]).

Worrall does not show means for combining the network data carried on the first segment and the second segment of the network cable.

Sorhaug shows means for combining the network data carried on the first segment and the second segment of the network cable (Fig. 2; col. 3 lines 39 – 45).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Worrall with that of Sorhaug in order to allow for more control of the network tap apparatus, and how the data in said network tap system was handled in order to enable more options for configuration and use as well as to monitor data at maximum data rates while providing not significant network data delay (Sorhaug, Abstract, col. 1 line 40 – col. 2 line 10).

Worrall in view of Sorhaug do not show delivering the combined network data to the first set of tap ports and the second set of tap ports.

NetOptics show delivering the combined network data to the first set of tap ports and the second set of tap ports (Paragraph 1, Figures in the upper right and middle of pg. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Worrall in view of Sorhaug with that of NetOptics in order to allow for the connection of more devices, enabling more detailed network monitoring as well as more possible monitoring configurations.

3. Regarding claim 2, Worrall in view of Sorhaug and NetOptics further show where the first and second sets of tap ports comprises a first and second tap port, wherein each of the first and second tap port is configured to be able to receive a copy of the

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combined network data (Worrall; Figs. 1A –1C, 4 and 5; NetOptics; Figures in the upper right and middle of pg. 1).

4. Regarding claim 3, Worrall in view of Sorhaug and NetOptics further show the first attached device can be selectively connected to the first tap port of the first set of tap ports and wherein a third attached device can be selectively connected to the second tap port of the first set of tap ports (specifically where NetOptics show a 4x1 GigaBit Regeneration Tap, which allows up to four devices to be connected to tap ports, which thus discloses having a third device connected to a second tap port (Paragraph 1, Figures in the upper right and middle of pg. 1)).

5. Regarding claim 4, Worrall in view of Sorhaug and NetOptics further show wherein the second attached device can be selectively connected to the first tap port of the second set of tap ports and wherein a fourth attached device can be selectively connected to the second tap port of the second set of tap ports (NetOptics; Paragraph 1, Figures in the upper right and middle of pg. 1).

6. Regarding claim 5, Worrall in view of Sorhaug and NetOptics further show wherein at least one of the first and second tap ports is configured to receive device data from the corresponding attached device (Sorhaug, Fig. 2, col. 2 lines 5 – 65).

7. Regarding claim 6, Worrall in view of Sorhaug and NetOptics further show wherein the means for combining the network data carried on the first segment and the second segment of the network cable and delivering the combined network data to the first set of tap ports and the second set of tap ports comprises a switch (Worrall, Fig. 1, Fig. 1(c)).

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8. Regarding claim 8, Worrall in view of Sorhaug and NetOptics further show means for inserting received device data into the network cable without disrupting the flow of data therein (Sorhaug, col. 2 lines 1 – 22, col. 2 lines 40 – 65, col. 3 lines 10 – 45).

9. Regarding claim 9, Worrall in view of Sorhaug and NetOptics further show means for inserting received device data into the network cable without disrupting the flow of data therein comprises an integrated circuit (Sorhaug, col. 2 lines 55 – 56, col. 3 lines 4 5- 47).

10. Regarding claim 10, Worrall in view of Sorhaug and NetOptics further show wherein the integrated circuit comprises a field programmable gate array (Worrall, Fig. 4).

11. Regarding claim 11, Worrall in view of Sorhaug and NetOptics further show wherein the means for inserting received device data into the network cable without disrupting the flow of data therein comprises an Ethernet switch (Worrall, Fig. 1(c)).

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worrall in view of Sorhaug and NetOptics as applied to claims 1, 2 and 6, above, and further in view of Tomonaga et al. (5,610,913), hereafter Tomonaga.

Worrall view of Sorhaug and NetOptics shows claim 6, including tap ports and well as demultiplexing and multiplexing data, which inherently involves separating two or more previously combined data streams (Figs. 4 and 5), as well as where said demultiplexing and multiplexing can be done in conjunction with a switch (Fig. 1(c)).

Worrall in view of Sorhaug and NetOptics do not show wherein the means for combining the network data carried on the first segment and the second segment of the

network cable and delivering the combined network data to the first set of tap ports and the second set of tap ports further comprises a fan out buffer disposed between the switch and the first and second set of tap ports.

Tomonaga shows where multiple inputs are sent into a switch, and then a multiplex/demultiplexer unit, which comprises a fan out buffer memory (Figs. 46 and 47).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Worrall in view of Sorhaug and NetOptics with that of Tomonaga in order to increase the number of devices and users that a network can accommodate and support (col. 3 lines 57 – 67).

13. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worrall in view of Sorhaug and NetOptics as applied to claims 1 and 2 above, and further in view of Yanacek et al. (5,940,376), hereafter Yanacek.

14. Regarding claim 12, Worrall in view of Sorhaug and NetOptics show claims 1 and 2.

Worrall in view of Sorhaug and NetOptics do not show wherein the first and second tap ports are capable of operating in a plurality of modes, each mode being defined by enabling or disabling the ability of the first and second tap ports to receive at least one of network data and device data.

Yanacek shows wherein the first and second tap ports are capable of operating in a plurality of modes, each mode being defined by enabling or disabling the ability of the first and second tap ports to receive at least one of network data and device data (Fig. 2, 10A – 10C).



It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Worrall in view of Sorhaug and NetOptics with that of Yanacek in order to enable a more advanced and flexible system, as well as introducing additional features such as the ability to trouble-shoot a switched network or to enable call-tapping logic without the need of a centralized server to provide connections (Yanacek, col. 1 lines 45 – 60).

15. Regarding claim 13, Worrall in view of Sorhaug, NetOptics and Yanacek further show wherein selecting one of the plurality of modes in which the first and second tap ports may operate comprises: a management port configured to selectively connect to a remote computer; and an integrated circuit configured to receive management data from the management port to at least indirectly enable or disable the ability of the first and second tap port to receive at least one of network data and device data (Yanacek, Figs. 2, 10A – 10C).

16. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worrall in view of Sorhaug, NetOptics and Yanacek as applied to claim 13 above, further in view of Bouthillier et al. (6,092,724), hereafter Bouthillier.

Worrall in view of Sorhaug, NetOptics and Yanacek enable configuring a network tap to operate in one of a plurality of modes (Yanacek, Figs. 2, 10A – 10C).

Worrall in view of Sorhaug, NetOptics and Yanacek do not show where this mode selection is done via one or more manual switches on the network tap.

Bouthillier shows a manual switch for changing the configuration and operating mode of a network device (Abstract, Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Worrall in view of Sorhaug, NetOptics and Yanacek with that of Bouthillier to enable the use of manual switches to configure the electronic device as manual switches are well-understood, easy to operate and reliable.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Frink whose telephone number is (571) 272-9686. The examiner can normally be reached on M-F 7:30AM - 5:00PM EST; off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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John Frink

(571) 272-9686

A handwritten signature in black ink, appearing to read "Andrew Caldwell". The signature is fluid and cursive, with a large, stylized initial "A".

ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER